

4860.

COUNTY COMMISSIONERS—MAY NOT CONTRACT FOR MORE THAN ONE LIBRARY IN A COUNTY—MAY NOT APPROPRIATE MONEY FOR BOOKS FOR SCHOOL CHILDREN—OPINION NO. 4520 DISCUSSED.

SYLLABUS:

1. *The board of county commissioners is not, by virtue of the provisions of Sections 2454, 2455 and 2456, General Code, authorized to enter into contracts with more than one public library at one time for the furnishing of public library facilities for the residents of the county.*

2. *A board of county commissioners may not legally appropriate money for the purpose of the purchasing, cataloging and distributing of books among the pupils of the villages and rural school districts in the county even though the books are to be selected jointly by the county superintendent and the county library and are distributed under the supervision of such superintendent and the title thereto is to remain in the county.*

3. *Opinion 4520 rendered under date of July 25, 1932, concerning the levying of taxes for library purposes, discussed.*

COLUMBUS, OHIO, January 6, 1933.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion on the following questions:

1. Whether, by virtue of the provisions of Section 2455, General Code, the county commissioners may enter into contracts with more than one library to furnish public library facilities for the residents of the county?

2. Whether, under the provisions of Section 7632, General Code, the bodies therein enumerated may contract for library services, the same as they have in the past and make levies therefor?

3. Whether the commissioners of Erie County may make an appropriation of \$1,000 to be used in the purchasing, cataloging and distributing of juvenile books in the Erie County villages and rural school districts, the selection of one half of the books to be made by the Erie County Superintendent of Schools, the title of the books to be in the County Commissioners, subject to the use of said books by the Erie County Superintendent of Schools for the lending of books among the children of the villages and rural school districts of Erie county.

The answer to your first inquiry depends upon the interpretation to be given to the language contained in Section 2455, General Code. Such section reads:

“A library association or other organization, owning or having the full management or control of a library, or a board of trustees appointed by authority of law and having the management or control of a library free to the whole or a part of a county may contract with the county commissioners for the use thereof by the people of such county.”

This section, together with Sections 2454 and 2456, General Code, were formerly paragraphs of the same section of the statutes. That is, they were all paragraphs of Section 891a, Revised Statutes. Being a part of the same section when enacted, they are in *pari materia*, and each should, therefore, be construed with reference to the others, in order to determine the legislative intent, which is the object of all judicial interpretation. Black on Interpretation of Laws, §86; English, Interpretation of Statutes, §53.

Section 2454, General Code, authorizes the county commissioners to acquire a public library by gift of a building, of money or of property with which to construct, furnish and equip such library. Such section further authorizes the county commissioners to accept the gift of a library or of library facilities, permanently or temporarily, and to provide and maintain such library.

The next following section, which was originally a part of the same section, authorizes any library *free to the whole or a part of a county* to enter into a contract with the county commissioners for the use thereof *by the people of such county*.

Section 2456, General Code, also originally part of the same section, directs the county commissioners, when they have entered into a contract with such library and accepted its proffered services, to "levy a tax * * on each dollar of taxable property in such county", and provides further that the funds derived from such levy shall be a special fund "known as *the library fund*."

From the language contained in such sections, it is apparent that the legislative intent in the enactment of the paragraph of the act now given section 2454, General Code, was to authorize the county commissioners to acquire *a library*, not *libraries*. The express language is "a library". Such section further reads:

"They may accept the gift of *a library* or of *its use* for a term of years or permanently, and may agree on behalf of such county to provide and maintain such library." (Italics, the writer's.)

The term "a library" used in the above section, is in the singular. It grants to the county commissioners the right to acquire *a* county public library or, in lieu thereof, to accept the services of *a* library. Section 2455, General Code, authorizes public libraries of certain types, to proffer their services to the county, but does not purport to grant any authority to the county commissioners to accept such offer. Such authority to accept, on the part of the county commissioners was expressly granted in the preceding paragraph of the original section now Section 2454, General Code. Since the next succeeding section of the Code or paragraph of the act maintains the singular idea running through the remainder of the act, I am of the opinion that the legislature did not intend to grant authority to the county commissioners to enter into such contract with more than one library at one time. This view gains additional weight from the fact that such sections grant authority to the commissioners to levy a tax, and such statutes must be construed strictly, in favor of the taxpayer. *Straub vs. Hilker*, 24 O. App. 90; *Board of Education vs. Briggs*, 114 O. S. 415; *Caldwell vs. State*, 115 O. S. 458; *Gray vs. Toledo*, 80 O. S. 445. I must, therefore, answer your first inquiry in the negative.

Your second inquiry concerns the construction of Section 7632, General Code, which reads:

"The board of education of any school district, the council of any municipality, or the trustees of any township may contract with the

library trustees of any public library appointed by authority of law, or with any private corporation or library association maintaining a free public library, situated within or without said taxing district, to furnish library service to all the inhabitants of said taxing districts, and may levy a tax therefor. Such tax levying authority shall require an annual report in writing from such library board, private corporation or library association. Where such tax for library purposes has been so levied, at each semi-annual collection thereof, the county auditor shall certify the amount collected to the proper officer of the taxing district who shall forthwith draw his warrant for such amount on the treasurer of such district payable to the proper officer of such library."

Such inquiry raises the same questions of law as were presented for my consideration in the request answered by my opinion bearing number 4520 to the Prosecuting Attorney of Hamilton County under date of July 25, 1932, with the exception that in such request the query concerned county public libraries. Since Amended Senate Bill 323, enacted by the Eighty-ninth General Assembly, which makes provision for tax revenues for the support of public libraries does not differentiate between the different types of public libraries in laying down the rule concerning the preparation and allowance of the budget of a public library, (Section 6), the reasoning contained in such opinion, as well as the conclusion reached therein would be equally applicable to the types of libraries described in Section 7632, General Code. The syllabus of such opinion No. 4520, reads:

"When the needs of a public library for the year 1932 or 1933 are in excess of the amount of taxes levied for such purposes during the year 1930, the budget commission, when such need is certified to it, should deduct from such estimated needs of the public library the amount of taxes levied for such library for the year 1930 and should include such excess in its computations in preparing the budget which can be assessed within the limitations of law, and when it has determined that such excess may be levied by a taxing authority within the limitations of law it should certify such finding to the tax levying authority in order that it may levy a tax on the taxable property within such taxing district to the amount of the excess so found."

Your third inquiry differs slightly from that made by you under date of June 24, 1932. At that time it was evidently urged that the proposed appropriation of the county commissioners was to be used by the county superintendent of schools in the purchasing, cataloging and distributing of books by him among the pupils of the villages and rural school districts, that is to the pupils of the schools within his jurisdiction. Your present inquiry contemplates a similar distribution of the books but differs from your former inquiry in that the title to the books is to remain in the county, and the books are to be selected by the county school superintendent and the county library.

In reply to your former inquiry I wrote you that in my opinion the conduct therein suggested was beyond the powers of the county commissioners. In such reply I stated that in my opinion:

"The Erie County Commissioners cannot appropriate money to be used to purchase, catalog and distribute books to school children in

Eric County through the office of the Eric County Superintendent of Schools, there being no provision of statute authorizing such act."

It must be remembered that a board of county commissioners is a governmental agency, and as such, has only such powers as have been given it by the legislature. In the first paragraph of the syllabus of the case of *Jones, Auditor, vs. Commissioners of Lucas County*, 57 O. S. 189, the court stated:

"Syl. 1. The board of county commissioners represents the county, in respect to its financial affairs only so far as authority is given to it by statute."

Such view was also taken by Crew, J., in rendering the opinion of the court in the case of *Peter vs. Perkinson, Treasurer*, 83 O. S. 36, 49:

"While in a sense the board of county commissioners, is the representative and financial agent of the county, its authority is limited to the exercise of such powers only as are conferred upon it by law."

And in *Elder vs. Smith, Auditor*, 103 O. S. 369, 370, Matthias, J., in rendering the opinion of the court, stated:

"It has long been settled in this state that the board of county commissioners has such powers and jurisdiction, and only such as are conferred by statute."

An examination of the statutes fails to disclose that express authority has been granted to the county commissioners to purchase books and distribute them for use in the manner suggested in your inquiry. There is granted to the county commissioners express authority to acquire a public library by gift of a building, of money or of property for such purpose. (See Section 2454, General Code). There is also express authority in the statutes for the creation of county library districts, the title to the property of which is held by a board of library trustees. (See Sections 7643-1 to 7643-9, General Code). There is no language contained in these sections which either expressly or by necessary implication purports to grant to the county commissioners the authority to appropriate money for the purposes suggested in your inquiry. I must, therefore, conclude that no such authority exists, and answer your third inquiry in the negative.

Specifically answering your inquiries it is my opinion that:

1. The board of county commissioners is not, by virtue of the provisions of Sections 2454, 2455 and 2456, General Code, authorized to enter into contracts with more than one public library at one time for the furnishing of public library facilities for the residents of the county.

2. A board of county commissioners may not legally appropriate money for the purpose of the purchasing, cataloging and distributing of books among the pupils of the villages and rural school districts in the county even though the books are to be selected jointly by the county superintendent and the county library and are distributed under the supervision of such superintendent and the title thereto is to remain in the county.

Respectfully,

GILBERT BETTMAN,

Attorney General.